

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

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Larrie Hope,
Plaintiff,

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT AL

*

Vs.

Case No: 2:07-CV-210-T

Richard Allen, et al.,
Defendant(s).

*

PLAINTIFF'S ANSWER TO DEFENDANTS
ANSWER AND SPECIAL REPORT

Comes now the plaintiff, Larrie Hope, Pro-se, in the above action, and hereby submits his answer to the Defendants Answer and Special Report, as follows:

Plaintiff's Contention:

Plaintiff's allege that the named Defendant's herein violated his Rights Guaranteed by the First, Eight and Fourteenth Amendments, to the United States Constitution, when the Defendant's used unwarranted excessive force against the plaintiff in retaliation for plaintiff exercising his First Amendment Rights.

On July 6, 2006 plaintiff was inmate housed at Kilby Correctional facility in the Segregation Unit of the Prison.

Plaintiff was transferred to Kilby Correctional Facility from Holman Prison on October 27, 2005 for the purpose of a scheduled appearance before the United States District Court for the Northern District of Alabama, in which plaintiff appeared before the Court on November 7, 2005.

On July 6, 2006 plaintiff was handcuffed and escorted to the shower by Defendant Pettaway and Barber. While in the shower, plaintiff was conversating with another inmate about what occurred, during his court appearance in the Northern District of Alabama, as plaintiff was talking, Defendant Pettaway walked up and told plaintiff to stop talking and get his "Mother-Fucker" ass out of the shower. Plaintiff responded "I'll stop," but you don't have to talk to me like that, you know you are violating standard operating procedures of officers."

Defendant Pettaway responded that since "you know the "fuck-ing" Rules so well shut the "fuck" up and get your ass out of the shower and I am going to show your ass something.

Defendant Pettaway then ordered the cubicle officer to turn the shower off, and Defendant Pettaway and Defendant Barber handcuffed the plaintiff and beganned to escort the plaintiff back to his cell.

As plaintiff was going back to his cell Defendant Pettaway grabbed plaintiff from behind and choked plaintiff to the floor and started punching plaintiff in the face, head and side of his stomach and Defendant Barber started kicking the plaintiff while plaintiff was being punched by Defendant Pettaway. Defendant Pettaway then took a belt and placed around plaintiff's neck as plaintiff laid handcuffed on the floor, and stated:

"You got away with your hitching, post case, but I'll hang your "ass" and get away with here at Kilby and my Boss [warden Rowell] will back my play."

While this was going on, Defendant Terius Dennis just stood by and watched and did not intervene to stop the Defendant's from violating my rights.

Defendant Rowell, Bolling, Clay and Smith arrived at the seen, while the plaintiff was laying on the floor in pain and covered in blood.

Defendants Contention:

Defendants denies that they have violated the plaintiff's Constitutional Rights and asserts defenses of Eleventh Amendment and qualified immunity's, as well as respondent superior.

Further the Defendants asserts a different version of the incident that occurred on July 6, 2006 that tends to dispute the plaintiff's version.

Defendants alleged that on July 6, 2006 Defendant Pettaway was assigned as the Officer on C and D Blocks in the Segregation Unit at Kilby Correctional Facility and Defendant Barber was the Rover of the Unit.

That while plaintiff was in the shower, Defendant Pettaway heard loud yelling coming from the shower and went to the area, and asked plaintiff to keep the noise down, and that plaintiff refuse and begin to make threats of killing Officer Pettaway.

Defendant Pettaway with Defendant Barber's assistant began escorting plaintiff back to his cell and while in route, plaintiff, turned toward Defendant Pettaway with a clenched fist and swung at Officer Pettaway's face at the time a struggle ensued with Defendant's Pettaway and Barber on top of plaintiff to bring him under control, that the plaintiff was kicking at the Officer and attempting to bite them.

Later Defendant Dinkins arrived and was told to go get a set of handcuffs. The plaintiff was handcuffed and picked up off the floor.

Defendants Bolling, Clay, Smith and Rowell entered the area immediately after the incident occurred and alleged that plaintiff, was still cursing loudly and threatening to kill Defendant, Pettaway.

Plaintiff was bleeding from the nose and mouth. And was taken to the Prison Infirmary for treatment.

PLAINTIFF'S ARGUMENTS IN OPPOSITION
TO DEFENDANT'S ANSWER AND SPECIAL
REPORT

As the defendants acknowledge, summary judgment may be granted only if there are no genuine issues of material facts and the movant is entitled to judgment as a matter of law. In making that assessment, the court must view the evidence in a light most favorable to the non-moving party and must draw all reasonable inferences against the moving party. Celotex Corp. Vs. Catrett, 477 U.S. 317 (1986):

The burden of proof is upon the moving party to establish his prima facie entitlement to summary judgment by showing the absence of genuine issues and that he is due to prevail as a matter of law. Once that initial burden has been carried, however, the non-moving party may not merely rest upon his pleading, but must come forward with evidence supporting each essential element of his claim. *Id.*

Initially, plaintiff avers that the defendants have fail to meet its initial burden to establish a prima facie entitlement to summary judgment by showing the absence of genuine issues.

In fact, the defendants version of the facts are at odds with the plaintiff's, and based on the pleadings and evidence of record, there are genuine issues in dispute and the defendants are not entitled to judgment as a matter of law.

While the defendants have collaborated and asserted that the force used against the plaintiff was based on plaintiff's own actions in clutching his fist and attempting to swing at Defendant, Pettaway.

There are serious loopholes in the defendant's version of the incident. The major flaws is the handcuffs, and the injuries plaintiff received from the incident.

First Administrative Regulation No. 433 requires "when the inmate is removed from an administrative segregation cell for any reason less otherwise directed by the Warden." (See Section IV C.5)

Further, Administrative Regulation No. 434, requires:

"Any time inmates are moved from their cells, they will be handcuffed behind their back and escorted by two (2) Correctional Officers."

(See Admin. Reg. #434 Sec. V. II)

Plaintiff avers based on these procedure requirements, it would be impossible for plaintiff to clench his fist and swing at Defendant Pettaway's face while handcuffed behind his back. Moreover, why would the defendants after wrestling the plaintiff, to the floor and kicking and beating him ask for a set of handcuffed, where plaintiff is already handcuffed behind his back. Even assuming arguendo that the plaintiff was not handcuffed, it would seem incredible that two officers, who was assigned to the segregation unit, would not have a set of handcuffed on them, especially when they are showing inmates, requiring that the inmates be escorted from their cells to the shower.

Further, the medical report of the incident contradicts the defendants version and supports the plaintiff's version that he was kicked and beaten by the defendants. Surely, the plaintiff, could not have received injuries to his eyes, nose, head, face and neck, if all the defendants did was got on top of the plaintiff "trying to bring him under control."

Plaintiff contends that the Eight Amendment prohibits the infliction, of cruel and unusual punishment displayed by the defendants in the instant case, as the force used was maliciously and sadistically inflicted for the very purpose of causing harm to the plaintiff. See Hudson Vs. McMillian, 503 US 1 (1992), and Defendant Dinkins failure to intervene and protect plaintiff from the assault. Accordingly, defendants are not entitled to summary judgment on plaintiff's excessive force claims.

RETALIATION CLAIMS:

Defendants asserts that plaintiff has failed to show a causal connection between his activities at Limestone and the Northern District of Alabama and the actions of these Correctional Officers at Kilby Correctional Facility.

The only evidence the defendant asserts in support of its defense, is the length of time between the lawsuit and the force incident. However, plaintiff asserts that his very purpose for being at Kilby was to attend a Court Appearance and that inspite of the length of time between the lawsuit and the incident. Hope Vs. Pelzer, 536 US 730 (2002), is a well known case among prisoner and prison officials.

At the time of the incident, plaintiff was discussing the case and other legal matters with another inmate, and when the defendants, Pettaway and Barber over-heard the conversation, they intervened, and in attempt to make the plaintiff stop discussing the case, told the plaintiff to shut up.

It is undisputed that plaintiff Larrie Hope, is known by the defendants as the lead inmate in the well known "Litching Post" case.

The defendants heard the plaintiff discuss the case and other legal matters with another prisoner, and used force against plain-

tiff, in retaliation for plaintiff exposing the cruel and unusual punishment exhibited by the Alabama Prison Officials in Hope.

Therefore, the defendants are not entitled to summary judgment on the retaliation claim. See farrow Vs. West 320 F.3d 1235, 1248 (11th. Cir. 2003) (Quoting Wildberger Vs. Brackenell, 869 F.2d 1467 (11th. Cir. 1989)).

RESPONDENT SUPERIOR:

Defendant Allen, Rowell, Barrett, Bolling and Clay, asserts that plaintiff fail to state a cause of action under §1983 that plaintiff is attempting to hold them responsible under the concept of respondeat superior. See Movell Vs. Department of Social Services of City of New York, 436 US 658 (1978).

Plaintiff avers that the above defendant all arrived on the scene of the incident and witness the physical abuse of the plaintiff, by defendants Pattaway and Barber, and these defendants being supervisor fail to discipline the officers.

Moreover, the defendants knew or should have known that Defendants, Pettaway and Barber would be assaultive toward plaintiff and other prisoners based on the history of the defendants and other officers at Kilby. Moreover, the superior defendants failure to properly train defendants Pettaway, Barber and Dinkins in accordance, with the regulation governing segregation prisoners, specc-

fically to handcuff them going to and from their cell is a direct cause of the Plaintiff suffering the injuries that he did.

Therefore, contrary to the Defendants assertion, the Defendants are liable under §1983 for their conduct in violating the Plaintiff's clearly established Constitutional Rights.

IMMUNITY

The Defendants are all state actors, acting under the color of state law, and knew or should have known that Beating and Kicking The Plaintiff in Retaliation for Plaintiff exercising his First Amendment Rights. *would violate Plaintiff's clearly established Constitutional Rights.*

CONCLUSION

Based on the foregoing, The Defendants should be held liable for violating Plaintiffs clearly Established Constitutional Rights guaranteed under The 1,8, and 14th Amendment to The U.S. CONstitution, Therefore, this court should set this cause for Trial.

Respectfully Submitted,

x Larrie Hope

Larrie Hope

AIS# 181215

Holman Unit 3700

Atmore, Al. 36503-3700

(11)

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of October, 2007.
Served a copy of the foregoing on counsel for Defendants, by
placing a copy of the same in the Prison Internal Mailing System
for mailing, Postage Prepaid and Properly Addressed as follows:

Ellen Leonard
Assistant Attorney General
11 South Union St
Montgomery, Al. 36130

x Larrie Hope
Larrie Hope

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

LARRIE HOPE

CASE NO.

PLAINTIFF,

2:07-CV-210-T

VS.

RICHARD ALLEN, et al,

DEFENDANTS.

AFFIDAVIT OF LARRIE HOPE

Before me the undersigned, a Notary Public in and for said County and State of Alabama at Large, personally appeared Larrie Hope, who being known to me, after being duly sworn, says as follows:

My name is Larry Hope Ais #181215, and I am the Plaintiff in the above styled action. I am over 21 years old ; competent, and have personal knowledge of the matters stated herein.

On July 6, 2006 I was housed in the Segregation Unit of Kilby Correctional Facility, I was there due to me being transferred from Holman to attend Federal Court.

On this day I was handcuffed by officer Pettaway and Barber and escorted to the shower,

While in the shower, I was conversating with other inmates about my lawsuits I had filed regarding the hitching post case, and what transpired at my court appearance, as I was talking Defendant Pettaway came and told me to shut my mouth, and get my " mother-fucking " ass out of the shower. I responded that I would stop talking, but you don't have to talk to me that way.

Defendant Pettaway stated that since I know the rules so well, shut up and get out of the shower and I am going to show your ass something.

Pettaway told the cubicle office to turn the shower off, and Pettaway and Barber handcuffed me behind my back, and began-
ed to escort me back to my cell, on the way Pettaway grabbed me from behind and started punching me in my face, head and stomach with his fist while Defendant Barber was kicking me in my side. While this was going on officer Terius Dinkins just stood there and watched me being assaulted.

Defendant Pettaway then took a belt and placed around my neck as I laid on the floor in pain.

Defendants, Bolling, Clay, Smith and Rowell entered the scene and witnessed the assaultive behavior of Pettaway and Barber and did not say a word to them.

I did not do anything to deserve the beating that I received, The Defendants sole reason for assaulting me was because of the lawsuits I have filed against the Department of Corrections and was discussing them with other inmates.

I swear that the foregoing is true and correct to the best of my knowledge and belief.

Larrie Hope
Larrie Hope

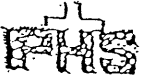
SWORN TO AND SUBSCRIBED BEFORE ME THIS 12 DAY OF OCTOBER 2007.

Clare Williams
NOTARY PUBLIC

7/17/08
MY COMMISSION EXPIRES

EMERGENCY

ADMISSION DATE 07/06/06		TIME 502 AM	ORIGINATING FACILITY KCP		<input type="checkbox"/> SICK CALL <input type="checkbox"/> EMERGENCY <input type="checkbox"/> OUTPATIENT	
ALLERGIES NKDA			CONDITION ON ADMISSION <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> SHOCK <input type="checkbox"/> HEMORRHAGE <input type="checkbox"/> COMA			
VITAL SIGNS: TEMP 98.4		ORAL RECTAL	RESP. 24	PULSE 112	B/P 146/100	RECHECK IF SYSTOLIC <100> 50
NATURE OF INJURY OR ILLNESS Body chart Per Doc Altercation			ABRASION /// CONTUSION # BURN xx FRACTURE Z LACERATION / SUTURES 			
PHYSICAL EXAMINATION Inmate escorted to wld by officers - face bloody, scratches (multiple) on (C) side of face, eyes (both) red. - Very hostile & angry. Abrasion on both sides of chest. Bruise on (L) lower chin. nose bleeding - controlled a pressure. Indentation noted on (C) side of nose - scratches & cuts noted on top of head - Abrasion on (C) side of back - C/O slight headache. Released back to DOC.			ORDERS / MEDICATIONS / IV FLUIDS TIME BY Areas cleaned & n/s P. Tylenol 500mg po Now for headache.			
DIAGNOSIS Altercation						
INSTRUCTIONS TO PATIENT						
DISCHARGE DATE 7/16/06		TIME 515 AM	RELEASE / TRANSFERRED TO <input checked="" type="checkbox"/> DOC <input type="checkbox"/> AMBULANCE <input type="checkbox"/>		CONDITION ON DISCHARGE <input checked="" type="checkbox"/> SATISFACTORY <input type="checkbox"/> POOR <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> CRITICAL	
NURSE'S SIGNATURE Debra Bunsler		DATE 7/16/06	PHYSICIAN'S SIGNATURE (C) 7/16/06		CONSULTATION	
INMATE NAME (LAST, FIRST, MIDDLE) Holt, Larry			DOC# 18215	DOB 7/5/50	R/S B/M	FAC. Kilby



Nursing Evaluation Tool:

General Sick Call

Facility: KCF
 Patient Name: Hope, Larrie
 Home Number: 181215
 Date of Report: 7-10-06
 Date of Birth: 7-15-56
 Time Seen: 600 AM/PM Circle One

Subjective: Chief Complaint(s): Massive head pain. Can't see out
 Onset: of Lt eye X 4 days ago.
 Brief History: 50 y/o Bm. No significant medical
history.

Objective: Vital Signs: (As Indicated) T: deferred HR: deferred RR: 16 BP: 100/60
 Examination Findings: A+O x3 Resp neg & clear. NAD.

Assessment: (Referral Status) Preliminary Determination(s): Alt in comfort
☐ Referral NOT REQUIRED
☒ Referral REQUIRED due to the following: (Check all that apply)
☐ Recurrent Complaint (same time & place as last time)
☒ Other: HA's, Can't see out of Lt eye

Comment: You should contact a physician and/or a nursing supervisor if you have any concerns about the status of the patient or an issue of the appropriate care to be given.

Plan: Check All That Apply:
☐ Instructions to return if condition worsens.
☐ Education: The patient demonstrates an understanding of the nature of their medical condition and instructions regarding what they should do as well as appropriate follow-up. ☐ YES ☐ NO (If NO then schedule patient for appropriate follow-up visits)
☐ Other:

OTC Medications given: ☒ NO ☐ YES (If Yes List):

Referral: ☐ NO ☒ YES (If Yes, Whom/Where): B. Adams CRNP

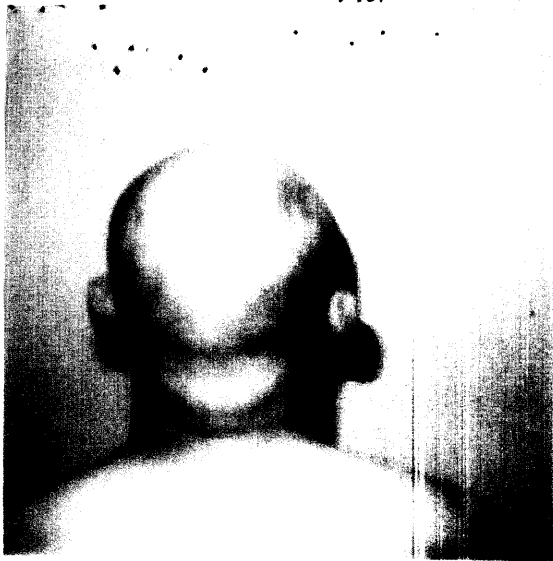
Referral Type: ☐ Routine ☐ Urgent ☐ Emergent (If emergent who was contacted?):

Date for referral: 7-10-06
 Time: 600

x L. Graves, RN
 Nurse Signature

Name: LORRAINE GRAVES
 Printed

KCF06-552



KCF06-552



KCF06-553



KCF06-552



KCF06-555

...

...

KCF06-552.





SEE'S MARK QUANT 39

LARREIE HOPE
AID # 181215-B1
TOLMAN UNIT 3400
A1.
At more,

36503-3400

OFFICE OF THE
United States District
Middle District
P.O. Box
Montgomery,

The enclosed is being referred to Alabama
State Court. The enclosed have not been qualified,
and the Alabama Department of Corrections is not
responsible for the substance or content of the
enclosed communication.

MA
copy
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